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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JERRY BROWN,

Petitioner,
v.

RENEE BAKER, *et al.*,

Respondents.

Case No. 3:19-cv-00258-LRH-WGC

ORDER

This action is a petition for a writ of habeas corpus, pursuant to 28 U.S.C. § 2254, by Jerry Brown, a Nevada prisoner. On May 15, 2019, Brown submitted, for filing, a Petition for Writ of Habeas Corpus (ECF No. 1-1) (with a copy of an order of the Nevada Court of Appeals attached to the petition), a Motion for Appointment of Counsel (ECF No. 1-2), a Motion to Amend (ECF No. 1-3), an Exhaustion Statement (ECF No. 1-4), and a Financial Statement (ECF No. 1-5).

Brown has not paid the \$5 filing fee for this action and has not applied to proceed *in forma pauperis*. He states in the Financial Statement (ECF No. 1-5) that he does not qualify for *in forma pauperis* status, and that he intends to pay the filing fee. The Court will set a deadline for payment of the filing fee after counsel appears on Brown's behalf.

Prisoners applying for habeas corpus relief are not entitled to appointed counsel unless the circumstances indicate that appointed counsel is necessary to prevent due process violations. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986) (citing *Kreiling v. Field*, 431 F.2d 638, 640 (9th Cir. 1970) (per curiam)). The court may, however, appoint counsel at any stage of the

1 proceedings if the interests of justice so require. *See* 18 U.S.C. § 3006A; *see also* Rule 8(c),
2 Rules Governing § 2254 Cases; *Chaney*, 801 F.2d at 1196. Brown's filings indicate that he is 66
3 years old and is serving two consecutive sentences of life in prison with the possibility of parole
4 after 10 years. Further, it appears from Brown's filings that he would not be able to litigate this
5 action *pro se*. The Court finds that appointment of counsel is in the interests of justice. The Court
6 will grant Brown's Motion for Appointment of Counsel (ECF No. 1-2).

7 The Court will also grant the Motion to Amend (ECF No. 1-3). The Court will set a
8 deadline for Brown to file an amended habeas petition, with the assistance of counsel, after
9 appointed counsel appears on his behalf.

10 The Court has examined Brown's petition, pursuant to Rule 4 of the Rules Governing
11 Section 2254 Cases in the United States District Courts, and the Court determines that it merits
12 service upon the respondents. The Court will order the petition served upon the respondents, and
13 will direct the respondents to appear, but will not require any further action on the part of the
14 respondents at this time.

15 **IT IS THEREFORE ORDERED** that the Clerk of the Court shall separately file the
16 Petition for Writ of Habeas Corpus (ECF No. 1-1), the Motion for Appointment of Counsel
17 (ECF No. 1-2), the Motion to Amend (ECF No. 1-3), the Exhaustion Statement (ECF No. 1-4),
18 and the Financial Statement (ECF No. 1-5).

19 **IT IS FURTHER ORDERED** that Petitioner's Motion for Appointment of Counsel
20 (ECF No. 1-2) is **GRANTED**. The Federal Public Defender for the District of Nevada (FPD) is
21 appointed to represent the petitioner. If the FPD is unable to represent the petitioner, because of a
22 conflict of interest or for any other reason, alternate counsel will be appointed. In either case,
23 counsel will represent the petitioner in all federal court proceedings relating to this matter, unless
24 allowed to withdraw.

25 **IT IS FURTHER ORDERED** that the Clerk of the Court shall electronically serve upon
26 the FPD a copy of this order, together with a copy of the Petition for Writ of Habeas Corpus
27 (ECF No. 1-1).

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1 **IT IS FURTHER ORDERED** that the FPD will have 30 days from the date of this order
2 to file a notice of appearance, or to indicate to the Court its inability to represent the petitioner in
3 this case.

4 **IT IS FURTHER ORDERED** that the requirement that Petitioner pay the filing fee for
5 this action is suspended. The Court will set a deadline for payment of the filing fee after counsel
6 appear for the petitioner and the respondents.


7 **IT IS FURTHER ORDERED** that the Clerk of the Court shall add Aaron Ford,
8 Attorney General of the State of Nevada, as counsel for the respondents.

9 **IT IS FURTHER ORDERED** that the Clerk of the Court shall electronically serve upon
10 the respondents a copy of the Petition for Writ of Habeas Corpus (ECF No. 1-1), and a copy of
11 this order.

12 **IT IS FURTHER ORDERED** that the respondents will have 30 days from the date of
13 this order to appear in this action. Respondents will not be required to respond to the habeas
14 petition at this time.

15 **IT IS FURTHER ORDERED** that the petitioner's Motion to Amend (ECF No. 1-3) is
16 **GRANTED**. The Court will establish a schedule for further proceedings, including amendment
17 of the petition, after counsel appear for the petitioner and the respondents.

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19 DATED this 16th day of May, 2019.

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22 LARRY R. HICKS
23 UNITED STATES DISTRICT JUDGE
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